

# State of Colorado



Bill Owens  
*Governor*

Richard Djokic  
*Director*

## DPA

Department of Personnel  
& Administration

### State Personnel Board

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## Meeting Minutes May 17, 2005

The State Personnel Board met in public session on Tuesday, May 17, 2005, at Colorado State University, A101 Clark Building, Fort Collins, Colorado 80523.

The meeting was called to order at approximately 10:40 a.m. Board Chair John Zakhem was present in person. The following Board members were present via teleconferencing: Elizabeth Salkind and Linda Siderius. Board members Troy Eid and Diedra Garcia were absent.

Richard Djokic, Board Director, was present in person. Jane Sprague, General Professional III, was present via teleconferencing in the Board office in Denver. First Assistant Attorney General Richard Forman, Board Counsel, joined the teleconference at approximately 10:50 a.m.

### I. REQUESTS FOR RESIDENCY WAIVERS

#### A. Department of Human Services, Fitzsimons State Veterans Nursing Home, State Personnel Board case number 2005R007.

Following a presentation on the agency's request for a residency waiver, a discussion regarding the fact that all of the positions for which a waiver has been requested are filled, and a determination that there should be a pending or current opening for a position for which a residency waiver has been requested, Ms. Siderius moved to deny the residency waiver request for the Nursing Home Administrator (General Professional VII) and the Director of Admissions (General Professional III) positions. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Mr. Zakhem. Mr. Eid and Ms. Garcia were absent.

The Board did, however, grant the Department of Human Services leave to file for reconsideration of its Request for Residency Waiver if it would supplement its request with additional information, including market data, which demonstrates a systemic problem in filling these positions.

B. May 1, 2005 Report on Residency Waivers

**II. PENDING MATTERS**

There are no pending matters before the State Personnel Board this month.

**III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

A. John J. Deelman v. Department of Education, Colorado School for the Deaf and the Blind, State Personnel Board case number 2005B020.

Ms. Siderius declared a conflict in this matter, leaving only two Board members eligible to consider the case and vote. Therefore, the matter was tabled until the next meeting.

**IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

A. Benjamin Vialpando v. Department of Transportation, State Personnel Board case number 2005G002.

Mr. Zakhem declared a conflict in this matter, leaving only two Board members eligible to consider the case and vote. Therefore, the matter was tabled until the next meeting.

B. LaVonne Taylor v. Department of Education, Colorado School for the Deaf and Blind, State Personnel Board case number 2004G029.

Ms. Siderius declared a conflict in this matter, leaving only two Board members eligible to consider the case and vote. Therefore, the matter was tabled until the next meeting.

C. Ken McCutcheon v. Department of Corrections, State Personnel Board case number 2005S009.

Ms. Salkind moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the

following Board members: Ms. Salkind, Ms. Siderius, and Mr. Zakhem. Mr. Eid and Ms. Garcia were absent.

- D. Lucille Dorsett v. Department of Military and Veterans Affairs, Division of Veterans Affairs, State Personnel Board case number 2005G048.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Mr. Zakhem. Mr. Eid and Ms. Garcia were absent.

**V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. Freddie L. Montoya v. Colorado State University, State Personnel Board case number 2005B059 (April 8, 2005).

Complainant, a custodian, appealed his administrative termination, seeking reinstatement, back pay and benefits, and attorney fees. After hearing, the ALJ found that Respondent did not discriminate against Complainant on the basis of disability and that its action was not arbitrary, capricious, or contrary to rule or law. The ALJ concluded Complainant does not have a disability under the Colorado Anti-Discrimination Act, since his limitations do not substantially limit a major life activity. The ALJ further concluded that Complainant is not a "qualified person" under the Act, because he could not perform the essential functions of his position with or without reasonable accommodation. The ALJ also determined that Respondent was diligent in its pursuit of complete information on Complainant's physical limitations, gave appropriate consideration to all information before it, acted reasonably in this situation, provided Complainant with unpaid leave in order to give him extra time to prepare for his return to work, and hired a temporary employee for two months to assist him in performing the essential functions of his position. Thus, Respondent's action was not arbitrary, capricious, or contrary to rule or law, and attorney fees are not warranted.

- B. Linda Escobedo v. Department of Human Services, Division of Youth Corrections, Zebulon Pike Youth Service Center, State Personnel Board case number 2005B049 (April 14, 2005).

Complainant, a security service officer, appealed her disciplinary termination, seeking reinstatement, back pay, and an award of attorney fees and costs. After hearing, the ALJ found that Complainant committed the acts for which she was terminated, including violating the self-reporting policies that governed her employment by failing to report a felony child

abuse charge, failing to provide a copy of the charging documents and the final disposition to her supervisor, and failing to comply with the appointing authority's directive to fax him copies of documents charging her with felony menacing. In addition, the ALJ determined that Respondent's action was not arbitrary and capricious, as Respondent used reasonable diligence to ascertain all information necessary to make a fully informed decision. Affirming the actions of Respondent, the ALJ dismissed Complainant's appeal with prejudice and did not award attorney fees and costs.

## **VI. REVIEW OF THE MINUTES FROM THE APRIL 19, 2005 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Siderius moved to approve the minutes of the April 19, 2005 meeting as submitted. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, and Mr. Zakhem. Mr. Eid and Ms. Garcia were absent.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS APRIL 19, 2005 PUBLIC MEETING:**

- A. Robert Cookson v. Department of Transportation, State Personnel Board case number 2003G139.

The Board voted to adopt and make an Order of the Board the Order Granting Respondent's Second Motion to Deem Complainant's Petition for Hearing Abandoned and to Dismiss Appeal with Prejudice.

- B. Troy Hardesty v. Department of Human Services, Division of Youth Corrections, Gilliam Youth Service Center, State Personnel Board case number 2003B246.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and made the Initial Decision an Order of the Board. The Board also ordered that Complainant's Motion to Strike Transcript of Evidentiary Hearing is remanded to the Administrative Law Judge for further proceedings as may be required.

- C. George Wheeler v. Department of Corrections, Denver Women's Correctional Facility, State Personnel Board case number 2005G029.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- D. LaVonne Taylor v. Department of Education, Colorado School for the Deaf and the Blind, State Personnel Board case number 2003G008.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Donald Lopez v. Department of Transportation, State Personnel Board case number 2005G024.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- F. John Pacheco v. Department of Corrections, Fremont Correctional Facility, State Personnel Board case number 2005G034.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- G. Cary Kelliher v. Department of Revenue, Field Audit Section, Tax Group, State Personnel Board case number 2004G121.

The Board voted to adopt the Preliminary Recommendation of the Director and grant the petition for hearing.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

### **IX. ADMINISTRATIVE MATTERS & COMMENTS**

#### **A. ADMINISTRATIVE MATTERS**

- Cases on Appeal to the Board and to Appellate Courts

#### **B. OTHER BOARD BUSINESS**

- Update on Legislation

Director Djokic reported that House Bill 05-1339, the fixative legislation proposed by the Board to determine deadlines for commencing hearings, had moved quickly through the senate, and in and out of committee unchanged. In addition, Mr. Eid was confirmed by the legislature on May 9, 2005, the last day of the session.

Mr. Djokic also stated that the Board Election will take place online between July 1 and July 15, 2005, with a choice of two candidates, Pat Robbins and Don Mares. Central payroll will have Election Instructions printed on the back of the July 1, 2005 payroll advisement, requiring an

employee who wants to vote to provide his/her last name and the last four digits of his/her social security number in order to access the online election ballot. Those who do not receive a paper payroll advisement will be informed via an electronic transmittal of the Election Instructions. The online program is also designed to match names with electronic employee lists, such as EMPL, in order to count the votes for each candidate, completing both certification and tabulation electronically. The set-up cost for the online program is approximately \$4,000; the program will be loaded on a computer server and made available to the Board for future elections and other online collection and dissemination of information. Mr. Zakhem commented that the program should be a "two-way street," as far as its ability to collect and generate information for employees, and that monitoring and safeguard mechanisms should be built into the program.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

**X. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the April 19, 2005 Executive Session

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Following Executive Session, the meeting adjourned by consensus.

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**APPROVED THIS 21st DAY OF JUNE, 2005.**

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John Zakhem, Chair

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Elizabeth Salkind, Member

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Linda Siderius, Member